



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

July 24, 1953

Hon. James A. Bethea, M.D.
Executive Director
Board for Texas State Hospitals
and Special Schools
Austin, Texas

Opinion No. S-73

Re: Legality of Board for Texas
State Hospitals and Special
Schools acting as trustee of
testamentary charitable
trust under submitted facts.

Dear Dr. Bethea:

You have given us the following information. Paragraphs four and six of the last will and testament of John C. Wende read, in part, as follows:

"4. To the Board of Control of the State of Texas and its successors in office, in trust, for the State Orphans' Home now operated for the benefit of orphans of the State of Texas at Corsicana, Texas, or such other orphans' home as may be operated by the State of Texas and selected by the Board of Control, I give, devise and bequeath in trust for the use and benefit of said orphans and subject to the conditions herein set out, the use, rents and revenues and income of the following described tracts of land . . . to be used for the benefit of such orphans as the Board of Control and its successors may deem advisable and in perpetuity.

"6. After the death of my said wife, Augusta L. Wende, all of said rest and residue of my property above mentioned not otherwise disposed of by her . . . shall be sold and liquidated and put in the form of cash money by my executor hereinafter named, and all of said money, including the proceeds of the sale of all of said rest and residue, I hereby give, devise and bequeath to the said Board of Control of the State of Texas and its successors in office in trust for said orphans' home, or such other orphans' home as may be operated by the State of Texas and selected by the Board of Control, the said Board of Control and its successors are to keep said fund and monies invested for the benefit of said orphans' home, and the income of said fund to be used for said home in perpetuity, . . ."

Hon. James A. Bethea, page 2 (S- 73)

You request the opinion of this office as to whether the Board for Texas State Hospitals and Special Schools can act as trustee of the charitable trust created by the above quoted provisions of Mr. Wende's will.

Prior to 1949, the State Board of Control had supervision and control of all the State eleemosynary institutions. Section 8 of Article 693, V.C.S., empowered the Board to take and hold in trust any gift for the benefit of such institution. By House Bill 1, Acts 51st Legislature, 1949, Chapter 316, page 588, the Board for Texas State Hospitals and Special Schools was created; and all rights, privileges, powers and duties previously vested in the Board of Control were transferred to the Board for Texas State Hospitals and Special Schools.

You are therefore advised that the Board for Texas State Hospitals and Special Schools can legally act as trustee of the charitable trust created by Mr. Wende's will.

SUMMARY

Even though the State Board of Control was designated as trustee of a testamentary charitable trust for the State Orphans' Home, the Board for Texas State Hospitals and Special Schools should act as trustee of said trust. H.B. 1, Acts 51st Leg., 1949, Ch. 316, p. 588.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

APPROVED:

W. V. Geppert
Taxation Division

Willis E. Gresham
Reviewer

Robert S. Trotti
First Assistant

John Ben Shepperd
Attorney General

By 
Marietta McGregor Creel
Assistant

MMC:mg